82-901

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

LEON W. KNIGHT, *et al.*,

Appellants,

v.

MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION, *et al.*,

Appellees.

On Appeal from the United States District Court for the District of Minnesota

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JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

I. Is the Minnesota Public Employment Labor Relations Act (PELRA) repugnant to the First Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, because it requires an agency of the State of Minnesota to negotiate terms and conditions of employment for Appellants and other of the State's community-college faculty with the Minnesota Community College Faculty Association (MCCFA), a self-interested private organization, thereby:

A. delegating to MCCFA a legislative power to make public policies binding on Appellants; and

B. depriving Appellants and all other nonmembers of MCCFA throughout Minnesota of legal equality of opportunity to influence the course of public-policy decisionmaking in the community colleges?

II. Is PELRA repugnant to the First Amendment and the Due Process Clause of the Fourteenth Amendment, because it requires Appellants as a condition of public employment to accept MCCFA as their "exclusive representative" for the purpose of negotiating terms and conditions of employment, where the record establishes that:

A. MCCFA and its affiliates, the National Education Association (NEA) and the Minnesota Education Association (MEA), and those affiliates' political-action arms, the Independent Minnesota Political Action Committee for Education (IMPACE) and the National Education Association

Political Action Committee (NEA-PAC), are component-parts of an integrated organization that styles itself the United Teaching Profession (UTP), and operates throughout Minnesota and the United States;

B. its substantial and essential involvement in political activism renders the UTP a political-action organization, indistinguishable from a political party for all relevant purposes of constitutional law; and thereby,

C. PELRA imposes a political-action organization on Appellants as their "sponsor" or "spokesman"?

PARTIES

Appellants are faculty-members in the Minnesota community colleges.[1] Appellee MCCFA is their exclusive representative.[2] Affiliated with MCCFA in the UTP are Appellees NEA, MEA, and IMPACE,[3] to-

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[1] Appellants include: Leon W. Knight, Morgan Kjer, Donald A. Dahlin, James D. Wallace, Terrence D. Florin, William B. Bauman, Harold J. Gardner, Thomas J. Patin, Eugene D. Mielke, Dr. Richard A. Thompson, David R. Grout, Joan M. Farkas, Gary Lee Nelson, Ronald Lievense, Lucille Johnson, Virginia E. Lanegran, Max A. Malmquist, Ralph G. Powell, Richard D. Isenhart, and Cresston Gackel.

[2] Appellees include various past and present officials and staff of MCCFA: James A. Norman, James K. Durham, Robert Ball, Calvin Minke, Ralph S. Chesebrough, and Donald Holman.

[3] Appellees include various past and present officials and staff of NEA, MEA, and IMPACE: William M. Mondale, James J. Rosasco, Alfred F. Provo, Albert L. Gallop, Fulton B. Klinkerfues, Janet R. Morgan, John Schutt, James A. Harris, Helen D. Wise, Catherine

gether with non-party NEA-PAC.[4] Appellee State Officials include past and present members of the Minnesota State Board for Community Colleges (Board);[5] certain community-college administrators;[6] and others who have performed or perform various functions under PELRA.[7]

O'C. Barrett, Terry E. Herndon, Sam E. Lambert, Willard H. McGuire, Roger Johnson, and Donald C. Hill.

[4] Appellees include various past and present officials and staff of NEA-PAC: Fulton B. Klinkerfues, Terry E. Herndon, Willard H. McGuire, and Roger Johnson.

[5] These Appellees include: Raymond Crippen, Rosemary McVay, John Sontorovich, Hugh V. Plunkett III, Arlene Nycklemoe, Douglas Alan Bruce, Ronald H. Denison, Toyse Kyle, Elma Ponto, Joseph Norquist, Nadine Chase, and Paul Brinkman.

[6] These Appellees include: Phillip C. Helland, John F. Helling, Dale A. Lorenz, and Neil Christensen.

[7] These Appellees include: Edward G. Ziegler, Val Bjornson, Charles Swanson, Wayne S. Burggraaff, James Lord, and Peter Obermeyer.

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On Appeal from the United States District Court for the District of Minnesota

JURISDICTIONAL STATEMENT

Leon W. Knight, *et alia,* respectfully appeal the findings of fact and judgment of the United States District Court for the District of Minnesota.

OPINIONS BELOW

The unreported findings of fact and opinion of the District Court here for review appear in the separate Appendix (A.) at 31 and 3, respectively. The unreported order of that Court denying Appellants' motions for rehearing appears in A. at 87.

The unreported earlier opinion of the District Court denying Appellants' motion to convene a three-judge

court appears in A. at 67. The opinion of the Court of Appeals for the Eighth Circuit ordering convention of the three-judge court is reported at 535 F.2d 466, and reprinted in A. at 55.

JURISDICTION

On 19 December 1974, Appellants filed their complaint for injunctive relief, invoking jurisdiction under 28 U.S.C. § 1343 and 49 U.S.C. § 1983 (1970), and requesting a three-judge court pursuant to 28 U.S.C. § 2281 (1970). On 13 February 1975, Appellants moved to convene a three-judge court; but the District Court denied this motion on 23 December 1975.[8] On petition for mandamus, the United States Court of Appeals for the Eighth Circuit ordered convention of the panel on 17 May 1976.[9] On 12 August 1976, Congress repealed 28 U.S.C. § 2281, but provided that the repeal "shall not apply to any action commenced on or before [that date]".[10] On 16 November 1981 and 31 March 1982, respectively, the District Court issued its findings of fact and conclusions of law and judgment, denying a permanent injunction with respect to the questions presented by this appeal.[11] The District Court denied Appellants' motions for rehearing on 13 August 1982.[12] And Appellants filed

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[8] A. at 67.

[9] *Id.* at 55, 535 F.2d 466. The Chief Judge of the Circuit Court designated the panel on 26 May 1976.

[10] Pub. L. 94-381, § 7, 90 Stat. 1119, 1120.

[11] A. at 31, 3, 83.

[12] *Id.* at 87, 95.

their notice of appeal in that Court on 4 October 1982, pursuant to 28 U.S.C. § 2101(b) (1976).[13]

This Court has exclusive appellate jurisdiction under 28 U.S.C. § 1253 (1976).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The appeal involves the constitutionality, under the First and Fourteenth Amendments to the United States Constitution, of the provisions of PELRA mandating compulsory collective bargaining through exclusive representation.[14]

STATEMENT OF THE FACTS

Appellants sued to challenge the constitutionality of compulsory public-sector collective bargaining through exclusive representation. After the Court of Appeals ruled that Appellants raised substantial constitutional questions,[15] the parties entered into extensive stipulations of fact, and presented evidence in hearings on two issues: (i) whether PELRA delegates governmental sovereignty to MCCFA, and thereby abridges popular sovereignty for its benefit; and (ii) whether PELRA requires Appellants to accept a political-action organization as their exclusive representative.

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[13] *Id.* at 99.

[14] The text of these constitutional and statutory provisions appears in *id.* at 105.

[15] For the procedural history, *see ante*, p. 2.

A. The record documents the adverse effects of PELRA on governmental and popular sovereignty.

Appellees conceded that PELRA requires the Board to negotiate with MCCFA, a private organization, over college employment-conditions; that MCCFA is the only organization that can enforce this requirement; that through these imposed negotiations MCCFA attempts as much as possible to influence college employment-policies; and that MCCFA considers itself and the Board "equal partners in [the] process [of setting terms and conditions of employment]".[16]

The State Officials' expert-witness in labor and industrial relations, Professor Milton Derber, testified without contradiction that compulsory collective bargaining provides exclusive representatives such as MCCFA with a means to influence governmental policy-decisions not available to other private interest-groups; and that this procedure, added to the representatives' participation in the normal political process of elections and lobbying, gives them a greater ability to influence policy than other citizens have. Derber defined PELRA's requirement that the Board negotiate college employment-policies with MCCFA as "a sharing of responsibility for [that] particular function", and explained this as the result of "an increasing conviction that * * * absolute [governmental] sovereignty * * * was no longer an acceptable idea", and that "State Legislator[s] did have the right and the power to delegate various of these responsibilities

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[16] Defendant State Officials' Stiplations, Set I, Nos. 16-20; Transcript of Hearings Before Special Master Leonard K. Lindquist (T.) at 218-19, 466-71, 473-78, 774-78, 5338-46, 5381-82. *See* Plaintiffs' Revised Stipulations (PRS) Nos. 1667-72; T. at 2140, 2579-85.

or to share them * * * with private groups". Appellants' expert-witness in political economics, Dr. Philip Bradley, testified without contradiction that "[w]hat happens under PELRA * * * is * * * a very substantial shift in the locus of decision making from * * * public authorities * * * to private [collectivities]", and that "these [private] organizational groups * * * possess a tremendous power to make decisions". And Appellants' expert-witness in political theory, Professor Sylvester Petro, testified without contradiction that "[t]here is no way in which governmental sovereignty can survive the existence of an absolute duty to bargain with [a private organization] to which the employees of the government owe allegiance" as their exclusive representative.[17]

Appellants' expert-witness in political science, Professor Gordon Tullock, testified without contradiction that statutes enabling private special-interest groups disproportionately to influence governmental officials are inconsistent with the normal pattern of American legislative representation (popular sovereignty).[18]

Derber, Bradley, and Appellants' other expert-witness in political economy, Professor Melvyn Krauss, also testified without contradiction that collective bargaining and exclusive representation under PELRA are evolutionally derivative of, functionally equivalent to, and structurally identical with the systems extant under the National Industrial Recovery Act (NIRA)

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[17] T. at 5254, 5256, 5265, 5142-43, 5167; 5647, 5650, 5651-52; 1743-53, 1758-59, 1767-73, 1788-90.

[18] *Id.* at 3708-10.

and the Bituminous Coal Conservation Act (BCCA),[19] which this Court held unconstitutional in *A.L.A. Schechter Poultry Corp.* v. *United States*[20] and *Carter* v. *Carter Coal Co.*[21] Asked whether any laws enacted after NIRA and BCCA "embodied * * * these same principles, these same ideas" and "were of the same nature", Derber identified "public sector [collective-bargaining] laws" such as PELRA, adding that the concept of bargaining by exclusive representation in PELRA historically evolved—without significant modification—from that concept as first applied in NIRA and BCCA. Derber described PELRA as functionally equivalent to NIRA and BCCA because "each of these three Acts were concerned with * * * providing the framework for the establishment of a system of collective bargaining". Krauss testified that NIRA, BCCA, and PELRA are structurally identical with respect to the key elements of collective bargaining and exclusive representation. And Bradley confirmed these conclusions.[22]

Krauss explained how, through compulsory public-sector bargaining, "the government is in essence coerced to deal with * * * private groups". "[A]n essential, critical element" of the system is exclusive representation, "the indispensable mechanism by which employees are collectivized". Exclusive representation

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[19] Respectively, Act of 16 June 1933, ch. 90, 48 Stat. 195, *and* Act of 30 August 1935, ch. 824, 49 Stat. 991.

[20] 295 U.S. 495 (1935).

[21] 298 U.S. 238 (1936).

[22] T. at 5177, 5181-82, 5199, 5291; 1324-28, 1341-42, 1352-54; 5626, 5630-31.

"impose[s] conformity of opinion among the members of the collectivized [private] grou[p] with respect to the economic variables with which the group is concerned", in order "to create a monopoly of political influence". "[T]he essence of [compulsory public-sector bargaining] is monopoly of political influence. To have monopoly of political influence you need unanimity of action. To have unanimity of action you need conformity of opinion. To have conformity of opinion you need exclusive representation." [23]

Finally, Derber and Bradley re-inforced the connexion among NIRA, BCCA, and PELRA by explaining how PELRA involves a delegation of legislative power to private groups.[24]

The District Court acknowledged this testimony and Appellants' contention that, "because MCCFA is a private organization, it holds an impermissible power under PELRA to make 'economic laws' and its function constitutes an impermissible delegation of state sovereignty". But it held that: (1) "Minnesota has not impermissibly delegated its sovereign power", because "[n]egotiated agreements with state employees and even arbitration awards must be 'submitted to the legislature to be accepted or rejected' "; (2) "the legislature's retained authority" is sufficient, because "[t]he continuing vitality of *Schechter* and *Carter* * * * is doubtful at best"; (3) this Court's decision

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[23] *Id.* at 1305, 1307-08, 1313-15, 1318-19, 1326-27, 1404, 1406.

[24] *Ante*, pp. 4-5. In both *Schechter* and *Carter*, this Court's decisions turned on the government's delegations of power to private groups. Schechter, 295 U.S. at 537; Carter, 298 U.S. at 311.

in *Abood* v. *Detroit Board of Education*[25] "squarely upholds the constitutionality of exclusive representation bargaining in the public sector"; and (4) MCCFA's ability to exercise extraordinary political influence under PELRA has "no constitutional significance".[26]

II. The record establishes that the UTP is an integrated political-action organization.

The UTP itself stipulated that "[t]he United Teaching Profession includes" MCCFA, MEA, and NEA; that NEA considers MCCFA and MEA "integral parts of the United Teaching Profession"; and that both MCCFA and MEA consider themselves "integral parts of the United Teaching Profession". NEA's top officials testified that affiliates such as MCCFA and MEA are "integral parts of a larger group"; that they all constitute an "integrated organization that operates cooperatively at [the local, state, and national] levels"; and that "[w]e are in fact three levels combined into one organization". MEA's President testified that "the IMPACE operation * * * is an integral part of the MEA organization"; IMPACE's Chairman admitted that "IMPACE will continue to operate * * * in total unison with the goals and objectives of the parent organization [MEA]"; and IMPACE's own guidelines recite how its contributions to candidates depend on their voting-records being "consistent with * * * the policies of the united teaching profession". A top staffperson of NEA testified that NEA-PAC is "a crea-

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[25] 431 U.S. 209 (1977).

[26] A. at 5-7, 9-10 n.8.

ture" of NEA; and NEA-PAC's own guidelines recite its purpose as "support[ing] candidates * * * in order to achieve political decisions consistent with the aims of the United Teaching Profession".[27] And the District Court found IMPACE and NEA-PAC to be the "political-action arms" of MEA and NEA, respectively.[28]

Appellants' expert-witness in organizational science, Professor Craig Schneier, testified without contradiction that NEA, MEA, MCCFA, IMPACE, and NEA-PAC "are very highly integrated to the point of oneness. They act * * * as one organization. * * * [C]ertainly beyond any reasonable doubt * * * the units function as one organization".[29]

And the few UTP lay-witnesses who speculated on the alleged "separateness" of the units conceded their ignorance of organizational science, how the units actually interact, or both.[30]

Nonetheless, the District Court found that "MCCFA, MEA, and NEA are not a single integrated organization" and that "IMPACE and NEA-PAC are * * * not part of any single integrated organization".[31]

The District Court assigned to the UTP the burden of proving its political activities "[r]elated to collec-

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[27] PRS Nos. 405-09; 408a, 435a, 433a; 674, 521, 519; 501, 503.

[28] A. at 37.

[29] T. at 1168, 1179-83, 1190-91, 1197-1202, 1254. *See id.* at 5460, 5476-77 (unchallenged corroborating testimony of Appellants' other expert-witness in organizational science, Professor Cyril Morgan).

[30] *Id.* at 764, 858, 886, 1710-11, 2751, 2760-69, 2788, 4464-67.

[31] A. at 39.

tive bargaining", in the sense of being "an integral part of the bargaining process".[32] Amazingly, however, the UTP itself admitted its substantial and essential involvement in lobbying, propaganda and agitation, political litigation, and political organizing—practically none of which was "an integral part of the bargaining process" in the community colleges.[33] Furthermore, the UTP admitted that substantial involvement in partisan politics—which *Abood* held unrelated to bargaining as a matter of law[34]—is essential to the achievement of its goals.[35]

Moreover, Appellants' expert-witness in political science, Professor Tullock, described the record in this

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[32] *Id.* at 11 & n.12, 32 & n.1. The quoted standard is that of the *Abood* plurality. 431 U.S. at 236 (opinion of Stewart, J.).

[33] PRS Nos. 1453-57, 1459a, 1461-64, 1468-69, 1471-1552a, 1556-58, 1561-80, 1593-1610, 1624, 1626-28; 49-50 (no personnel from NEA and only one staff-man from MEA have bargained on behalf of MCCFA since 1 July 1971). On "substantial" or "essential" involvement in political activism as the defining characteristic of a political-action organization, *see* Vieira, "Are Public-Sector Unions Special Interest Political Parties?", 27 *DePaul L. Rev.* 293, 322-49 (1978).

[34] 431 U.S. at 232-37 (opinion of Stewart, J.), 244 (Stevens, J., concurring), 254 (Powell, J., concurring in the judgment).

[35] PRS Nos. 1188-1303. *See* especially the UTP's slogan "every educational decision is a political decision", emphasizing that it must be involved in partisan-political activism at every level of government, including the election or appointment of city councils, local school boards, state boards of education, state legislatures, state governors, Congress, the President of the United States, and even the Justices of this very Court. *Quoted in* Plaintiffs' Objections to the Court's Findings of Fact *and* Motion to Amend the Court's Findings of Fact to Conform to the Law and to the Evidence (MAF) at 104-06, *in* A. at 270-73.

case as "more complete than I have ever seen before on any pressure group", and characterized the UTP as a dominantly political organization. Tullock explained that the UTP is not a traditional political party, because "it doesn't run [candidates] under its own name", but that, in terms of its degree of political involvement, the distinction "is not very substantial".[36]

Attempting to relate its political activities to collective bargaining, the UTP introduced exhibits listing budget-allocations of its units. However, Appellants' expert-witness in accounting, Mr. Irving Ross, testified without contradiction that none of the UTP's financial documents had "a specific data base * * * so as to yield information with respect to political expenditures or collective bargaining expenditures", and that none of its other evidence satisfied generally accepted accounting standards and practices respecting the calculation of such expenditures. And the UTP's own lay witnesses confirmed this conclusion in every particular.[37]

The UTP also interrogated some of its officials and staff concerning their alleged allocation of "working-time". However, this testimony rested on no personal knowledge; lacked supporting documentation; was impugned by the record; or relied on retrospective "estimates" and "guesses", not demonstrable facts.[38]

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[36] T. at 3698-702, 3728, 3786.

[37] *Id.* at 5560-67, 5584-86, 5605-09; 4429-39, 4472-73, 4491-93, 4504-05, 5086-96, 5107-08, 5369-73, 5376-77, 5384-85.

[38] The extensively defective nature of this voluminous material precludes more than a synopsis here. For a detailed critique, *see* MAF at 131-67, *in* A. at 299-335.

Furthermore, much of it purported to analyze activities of MEA's "UniServ Directors"—in the face of stipulations that neither NEA nor MEA can determine how much money UniServ units spend on politics and bargaining, or how much time the Directors devote to those activities; and in the teeth of the UTP's own quantitative UniServ survey, showing partisan-political activities in from 87-99% of the units nationwide.[39]

Nonetheless, the District Court determined that the UTP "is predominantly engaged in activities closely and directly related to collective bargaining", and that therefore Appellants' contention that the UTP is an "integrated organization that functions as a quasi-political party * * * is without merit as a factual matter".[40]

III. Notwithstanding the record, the District Court upheld the constitutionality of PELRA.

Relying on these rulings, the District Court declared that, with regard to exclusive representation, "PELRA as applied to the community colleges is * * * valid in all respects".[41]

Appellants objected to the District Court's findings of fact, and moved for rehearing; but the Court denied their motions.[42] They now seek review of the District Court's findings and judgment.

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[39] PRS Nos. 69-85, 86-102; 1629, *quoted in* MAF at 70-73 & n.315, *in* A. at 238-40 & n.315.

[40] A. at 12.

[41] *Id.* at 26.

[42] *Id.* at 87, 95.

SUBSTANTIALITY OF THE QUESTIONS PRESENTED

I. The District Court's ruling that exclusive representation under PELRA is constitutional expunges the non-delegation doctrine from constitutional law, eviscerates *Schechter* and *Carter*, perverts *Abood*, and, overall, licenses the State of Minnesota to prostitute the political process for the benefit of private special-interest groups.

A. Compulsory public-sector collective bargaining through exclusive representation transfers some measure of decisionmaking authority over public policies from public officials to private groups, thereby delegating governmental sovereignty to those groups. On this point, agreement is unanimous among commentators;[43] among the parties to this appeal;[44] and even among the Judges of the District Court and the Justices of this Court.[45]

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[43] *E.g.*, C. Summers, "Public Employee Bargaining: A Political Perspective", 83 *Yale L.J.* 1156, 1156, 1157, 1160 (1974) ("[t]he introduction of collective bargaining * * * in the public sector * * * restructures the political process"); R. Summers, *Collective Bargaining and Public Benefit Conferral: A Jurisprudential Critique* (Inst. of Pub. Employment, N.Y. State School of Indus. and Lab. Rel'ns, Monograph No. 7, Nov. 1976), at 3 ("[c]ollective bargaining cannot be engrafted on to [the governmental process] without redistributing power"); Wellington & Winter, "The Limits of Collective Bargaining in Public Employment", 78 *Yale L.J.* 1107, 1109 (1969) ("a great deal of shared control is implicit in any scheme of collective bargaining").

[44] *See ante*, notes 16-17 & accompanying text. The UTP made no attempt to challenge this expert-testimony.

[45] Both the District Court, and this Court in *Abood*, commented that bargaining provides employees with "economic benefits" that

1. The District Court, however, held PELRA's delegation of sovereignty to MCCFA "not impermissibl[e]", because "[n]egotiated agreements with state employees and even arbitration awards must be 'submitted to the legislature to be accepted or rejected' ".[46] Four errors vitiate this conclusion: *First,* it begs the question—which is *not* "What power has the legislature *retained?*", but rather "What power has it *delegated* to private groups?" Even if the Minnesota Legislature itself bargained with MCCFA, it would still have committed the State (through PELRA) to negotiate the content of public policy in the colleges with a private group, subject to compulsory arbitration of disputes and the threat of strikes.[47] Under PELRA, the Legislature enjoys *less* "retained

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justify imposing "agency fees" on non-members of the exclusive representative. A. at 4-5, 8; 431 U.S. at 221-22 (opinion of Stewart, J.). If collective bargaining *creates* benefits for some employees, though, it does so *only by altering the course of public-employment policy from what it would have been absent bargaining,* through the representative's ability to require the government to negotiate the substance of that policy. Now, a State's power to determine the wages, hours, and other working-conditions of its employees is "[o]ne undoubted attribute of state sovereignty". National League of Cities v. Usery, 426 U.S. 833, 845 (1976). Therefore, if *Abood* correctly sustained agency fees as payments for *special* benefits some employees receive from *and solely because of* bargaining, then (to the degree it confers such benefits) bargaining must involve a transfer of "state sovereignty", from the government to private groups. *Cf.* 431 U.S. at 243 (Rehnquist, J., concurring).

[46] A. at 5-6.

[47] *See* Minn. Stat. §§ 179.63, subd. 16; 179.64; 179.65-179.67; 179.68, subd. 2; 179.69-179.70; 179.74, *in* A. at 111-27, 129-33, 142-44.

authority" then if it negotiated directly with MCCFA.[48] Unless the "sharing" of governmental authority with a private group by a state legislature itself is always a "permissible" delegation of sovereign power, PELRA's more egregious arrangement is self-evidently unconstitutional.[49]

Second, the Distict Court's reliance on "retained authority" myopically focusses on the Legislature's remote, contingent, and limited review, while blinking MCCFA's direct, immediate, and plenary influence over adoption and implementation of college policies. This Court has repeatedly held that a legislature delegates no power by authorizing some party merely to approve, disapprove, suspend, or revive the operation of a statute—because the legislature determines the original substance of the law.[50] If a *granted* power to

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[48] The Legislature's sole power is to "accep[t] or rejec[t]", but not to modify or impose, "[t]he provisions of the negotiated agreements and arbitration awards". Minn. Stat. § 179.74, subd. 5, *in* A. at 143. Indeed, the Legislature's own Commission on Employee Relations "may make recommendations [concerning collective bargaining] * * * *but no recommendation shall impose any obligation or grant any right or privilege to the parties*". Minn. Stat. § 3.855, subd. 2 (emphasis supplied). Moreover, under some circumstances, the Commission may give "interim approval" to a "proposed agreement or arbitration award" that has been "rejected or * * * not approved by the legislature". Minn. Stat. § 179.74, subd. 5, *in* A. at 143-44.

[49] *See* Schechter, 295 U.S. at 537 (congressional "delegation of legislative power [to private groups] is unknown to our law and is utterly inconsistent with the constitutional prerogatives and duties of Congress").

[50] *E.g.*, Currin v. Wallace, 306 U.S. 1, 15-16 (1939); Union Bridge Co. v. United States, 204 U.S. 364, 377-87 (1907); Field v. Clark, 143 U.S. 649, 681-83 (1892).

approve or disapprove the operation of a law involves no invalid *delegation*, such a *retained* power hardly constitutes a constitutionally significant *withholding* of legislative authority. Under PELRA, MCCFA and the Board jointly negotiate the agreements the Legislature must accept or reject. These agreements have "all the attributes of legislation for the subjects with which [they] dea[l]".[51] The *real* lawmaking, then, derives from MCCFA's negotiations, not the Legislature's tardy approval thereof.

Third, the District Court's decision forgets that this Court long ago rejected the "retained-authority" defense. Under NIRA and BCCA, executive and administrative officials of the national government could approve, disapprove, modify, or establish themselves the "codes" of economic law the statutes licensed private groups to promulgate.[52] Nevertheless, *Schechter* and *Carter* condemned the delegations of legislative power to those groups as "utterly inconsistent" with the Constitution and "intolerable".[53]

Fourth and last, the District Court's ruling obliterates the non-delegation doctrine. For all *delegations*, as opposed to *abdications*, of legislative power implicitly assume the legislature's reservation of authority to revoke its grant, if only by repeal of the statute itself. An explicit statement of this "retained authority" adds nothing. Therefore, if mere "retained authority" immunizes *any* delegation of legislative

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[51] Abood, 431 U.S. at 252-53 (Powell, J., concurring in the judgment).

[52] NIRA §§ 2(a, b), 3(a, d), 4(a), 7(b, c), 48 Stat. at 195-96, 196, 197, 199; BCCA §§ 2(a), 4, Pt. I(a), Pt. II(a, c), Pt. III (c-g), 49 Stat. at 992, 994-95, 995-98, 1001-02.

[53] Schechter, 295 U.S. at 537; Carter, 298 U.S. at 311.

power to private groups, then *all* such delegations—being rationally indistinguishable in this particular—are always constitutional.

For the District Court's decision to stand, then, this Court must join with it in expunging the non-delegation doctrine from constitutional law.

2. Sensing the absurdity of its "retained-authority" thesis in light of *Schechter* and *Carter,* the District Court disparaged their "continuing vitality" as "doubtful at best".[54] A District Court, however, must enforce this Court's decisions when they apply to the facts before it, not disregard them because of inapposite speculations about their "vitality".[55] As recent opinions of this Court illustrate, the non-delegation

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[54] A. at 6 & n.5.

[55] *E.g.*, United States v. Crocker, 420 F.2d 307, 209 (8th Cir. 1970); McCray v. Burrell, 516 F.2d 357, 364-65 (4th Cir. 1975); Holmes v. Burr, 486 F.2d 55, 60 (9th Cir. 1973); Patterson v. Brown, 393 F.2d 733, 736 (10th Cir. 1968); United States v. Miller, 316 F.2d 81, 83 (6th Cir. 1963).

Besides, the lower-court decisions the District Court cited to rationalize ignoring *Schechter* and *Carter* involved no delegations of legislative authority to private groups at all. Simon v. Cameron, 337 F. Supp. 1380, 1383 (C.D. Cal. 1970) (group "with its close state connections should be characterized as a public agency"); Quincy College and Seminary Corp. v. Burlington Northern, Inc., 328 F. Supp. 808, 811 (N.D. Ill. 1971) (authority granted to National Railroad Passenger Corporation [Amtrak] had "sufficient statutory standards and safeguards"; no claim that Amtrak a merely private group). Moreover, the very treatise the District Court cited emphasizes the continuing importance of the non-delegation doctrine where private groups are concerned, and refers to *Carter* as "[o]ne of the most important cases". 1 K. Davis, *Administrative Law Treatise* (2d ed. 1978), § 3:12, at 194.

doctrine of *Schechter* and *Carter* remains the law.[56] And the uncontradicted testimony of Professors Derber and Krauss, and Dr. Bradley, proves the materiality of that doctrine to the facts of this case.[57] For the District Court's decision to stand, then, this Court must join with it in eviscerating *Schechter* and

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[56] Industrial Union Dep't, AFL-CIO v. American Petrol. Inst., 448 U.S. 607, 646 (opinion of Stevens, J.), 664 n.1 (Powell, J., concurring in part and in the judgment) (1980); National Cable Television Ass'n, Inc. v. United States, 415 U.S. 336, 340-42 (1973); United States v. Robel, 389 U.S. 258, 275 (1967) (Brennan, J., concurring in the result). *See also* cases in which Justices have asserted the non-delegation doctrine in circumstances where the majority saw no delegation problem. New Motor Vehicle Bd. of California v. Orrin W. Fox Co., 439 U.S. 96, 125-26 (1978) (Stevens, J., dissenting); California Bankers Ass'n v. Schultz, 416 U.S. 21, 90-91 (1974) (Douglas, J., dissenting); McGautha v. California, 402 U.S. 183, 252-54 & nn.2-3, 271-73 & n.21 (1971) (Brennan, J., dissenting); Zemel v. Rusk, 381 U.S. 1, 21-22 (1965) (Black, J., dissenting); Arizona v. California, 373 U.S. 546, 625-26 (1963) (Harlan, J., dissenting); United States v. Sharpnack, 355 U.S. 286, 297-98 (1958) (Douglas, J., dissenting).

Furthermore, two other decisions on which *Carter* relied, *Washington* ex rel. *Seattle Title Trust Co.* v. *Roberge*, 278 U.S. 116, 121-22 (1928), and *Eubank* v. *City of Richmond*, 226 U.S. 137, 143 (1912), have also received continuing approbation. City of Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668, 677-78 (opinion of the Court), 683 & n.5 (Stevens, J., dissenting) (1976); Village of Belle Terre v. Boraas, 416 U.S. 1, 6-7 (1974); New Motor Vehicle Bd. of California, *ante*, 439 U.S. at 125-26 n.30 (Stevens, J., dissenting); McGautha, *ante*, 402 U.S. at 254 n.3, 272-73 & n.22 (Brennan, J., dissenting).

[57] The testimony of both Krauss and Derber rested in large measure on review of this Court's opinions in *Schechter* and *Carter*. T. at 1334-35, 5189-91.

Carter, with all the far-reaching political-economic consequences that action entails.[58]

3. Attempting to avoid *Schechter* and *Carter* altogether, the District Court fantasized that *"Abood* squarely upholds the constitutionality of exclusive representation bargaining in the public sector".[59] This is a five-fold misrepresentation: *First,* exclusive representation was not at issue in *Abood.* The complaints did not challenge it.[60] The lower courts did not rule on it.[61] The parties did not contest it before this Court,[62] but instead agreed that the "appeal * * * does not raise the question".[63] And the *Abood* plurality defined the problem as "whether [an agency-shop] arrangement violates * * * constitutional rights", holding that "[a]ll we decide is that * * * the complaint * * * establish[es] a cause of action" with respect to the agency shop.[64]

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[58] *See* Vieira, "Compulsory Public Sector Collective Bargaining: The Trojan Horse of Corporativism", *Gov't Union Rev.,* Vol. 2, No. 1 (Winter 1981), at 56.

[59] A. at 7.

[60] Appendix to Brief for Appellants, Abood v. Detroit Bd. of Educ., No. 75-1153 (U.S. Sup. Ct., filed 2 July 1976), at 6-15, 39-52. *See* 431 U.S. at 213 (opinion of Stewart, J.).

[61] Appendix to Brief for Appellants in *Abood,* at 94-104. *See* 431 U.S. at 215 (opinion of Stewart, J.).

[62] Jurisdictional Statement in *Abood* (filed 13 Feb. 1976), at 6; Brief for the Appellants in *Abood* (filed 9 July 1976); at 4; Brief for Appellees in *Abood* (filed 10 Sept. 1976), at x.

[63] Brief for the Appellants in *Abood,* at 148. "[T]he states are free to adopt the federal model of * * * exclusive representation (*which appellants do not challenge*) * * *." Brief for Appellees in *Abood,* at 34 (emphasis supplied).

[64] 431 U.S. at 211, 236-37 (opinion of Stewart, J.). *Accord, id.* at 217, 224-25 (opinion of Stewart, J.).

Second, no opinion in *Abood* addressed exclusive representation. The plurality invoked the representative's "various responsibilities" as rationalizing the agency shop—without referring to any decision sustaining the delegation of bargaining-privileges to a private organization in the public sector.[65] Justice Powell noted that a "collective bargaining agreement to which a public agency is a party * * * has all the attributes of legislation", and warned that "voters * * * could complain * * * that their voting power and influence on the [governmental] decision making process had been unconstitutionally diluted" by delegation to a private group of power to participate in making such economic laws—but he, too, refrained from any constitutional judgment.[66] Justices Rehnquist and Stevens said nothing on the subject. And the parties themselves reserved, or remained silent on, the delegation-question.[67]

Third, the sole constitutional precedent subtending *Abood's* decision on the agency shop, *Railway Em-*

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[65] 431 U.S. at 224-25 (opinion of Stewart, J.). The plurality merely accepted as unchallenged the State's "determin[ation] that labor stability will be served by a system of exclusive representation". *Id.* at 229 (opinion of Stewart, J.). Indeed, except for one decision condemning exclusive representation as "legislative delegation in its most obnoxious form", no opinion of this Court has squarely addressed the matter. Carter, 298 U.S. at 311 (opinion of the Court), 318 (Hughes, C.J., concurring). *See* City of Madison, Joint School Dist. No. 8 v. WERC, 429 U.S. 167, 175 (1976).

[66] 431 U.S. at 252-53, 262 n.15 (opinion concurring in the judgment).

[67] Appellants in *Abood* noted the relevance of *Schechter, Carter,* and *Lathrop* v. *Donohue,* 367 U.S. 820 (1961), to the delegation-of-power problem. But they disclaimed any intent to "advert to

ployes' Department v. *Hanson*,[68] had nothing to do with exclusive representation. The *Abood* plurality cited *Hanson* only in connexion with the agency shop.[69] And the Court of Appeals heretofore in this case held *Hanson* irrelevant to exclusive representation.[70]

Fourth, the record in *Abood* lacked "factual concreteness and adversary presentation" even with re-

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the controlling nature of these decisions on the issue of exclusive representation", because "[i]t is not our purpose to raise the[se] constitutional conrundrums". Brief for the Appellants in *Abood*, at 126. Appellees' brief contained no reference to *Schechter* or *Carter* at all. Brief for Appellees in *Abood*, at iv-viii.

Not surprisingly, then, the *Abood* plurality also ignored *Schechter* and *Carter*, and acknowledged *Lathrop* only to note that that decision "does not provide a clear holding to guide us in adjudicating the constitutional questions here presented". 431 U.S. at 233 n.29 (opinion of Stewart, J.). *Contrast* Lathrop, 367 U.S. at 853-55 (opinion of Harlan, J.), 878 n.1 (opinion of Douglas, J.) (discussing the relevance of *Schechter*). This silence would depart radically from traditional principles of constitutional adjudication if, as the District Court erroneously implied, *Abood* "overruled" *Schechter* and *Carter* on the delegation-issue.

[68] 351 U.S. 225 (1956).

[69] 431 U.S. at 215, 217 n.10, 222 (opinion of Stewart, J.).

[70] "The petitioners' constitutional challenge to the exclusive representation scheme of the PELRA is distinct from *Hanson*. * * * In contrast [to that challenge], * * * *Hanson* was confronted with an attack on the [Railway Labor Act], which allows for exclusive representation similar to that of the PELRA, but it did not resolve the validity of such a scheme. * * * *Hanson* does not 'foreclose the subject' of petitioners' challenge to the exclusive representation scheme of the PELRA." Knight v. Alsop, 535 F.2d 466, 470-71 (8th Cir. 1976), *in* A. at 61-62.

spect to the agency shop.[71] Any "holding" regarding exclusive representation, then, could have amounted only to an advisory opinion, improper under Article III of the Constitution.[72]

Fifth and last, the *Abood* plurality itself compellingly distinguished the agency-shop issue there from that of exclusive representation here. Assuming the constitutionality of exclusive representation, appellants in *Abood* attacked only the requirement of financial support therefor. Because "[p]ublic employees are not basically different from private employees" with respect to unions, the plurality upheld the agency shop, relying on the private-sector case, *Hanson.*[73] Here, Appellants challenge exclusive representation itself, because it delegates public authority to, and abridges popular sovereignty for the benefit of, a private group. Thus, unlike *Abood,* this case hinges on "[t]he very real differences between * * * bargaining in the public and private sectors", particularly that " '[t]he uniqueness of public employment * * * is in the special character of the employer' ", government.[74]

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[71] 431 U.S. at 236 (opinion of Stewart, J.). *Accord, id.* at 244 & n. (Stevens, J., concurring).

[72] *See, e.g.,* United Pub. Workers v. Mitchell, 330 U.S. 75, 89-91 (1947).

[73] 431 U.S. at 230-31, 232 (opinion of Stewart, J.).

[74] *Id.* at 230 (opinion of Stewart, J.), *quoting* C. Summers, "Public Sector Bargaining: Problems of Governmental Decisionmaking", 44 *Cinn. L. Rev.* 669, 670 (1975). For this reason, even if relevant, *Abood* would not control here. *See, e.g.,* Quong Wing v. Kirkendall, 223 U.S. 59, 63-64 (1912).

In sum, *Abood* is irrelevant because: the record there did not frame the exclusive-representation issue; the parties did not present, argue, or even contest the matter; resolution of the question was unnecessary for the Court's decision; and none of the opinions even described, let alone analyzed or solved, the legal problems Appellants present here.[75] For the District Court's decision to stand, then, this Court must join with it in perverting *Abood* beyond recognition.

B. By delegating governmental sovereignty to MCCFA, PELRA also abridges popular sovereignty for its benefit. On this point, too, there is unanimity among commentators[76] and the parties to this ap-

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[75] *Compare and contrast* United States v. Mitchell, 271 U.S. 9, 14 (1926), *and* Webster v. Fall, 266 U.S. 507, 511 (1925) (previous decision not precedent on "question not raised by counsel • • • merely because it existed in the record and might have been raised"). *See, e.g.*, United States v. L.A. Tucker Truck Lines, Inc., 344 U.S. 33, 38 (1952); Tofft, Weller & Co. v. Munsuri, 222 U.S. 114, 119-20 (1911); Cross v. Burke, 146 U.S. 82, 87 (1892); Green v. United States, 355 U.S. 184, 197 n.16 (1957); Powell v. Alabama, 287 U.S. 45, 77 (1932); Snow v. United States, 118 U.S. 346, 354-55 (1886).

In so far as they imply approbation of exclusive representation, the remarks of the *Abood* plurality cited *ante*, note 65, constitute merely those "general expressions" that "go beyond the case" and "ought not to control the judgment in a subsequent suit, when the very point is presented for decision". Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 399 (1821).

[76] *E.g.*, C. Summer, "Public Sector Bargaining: Problems of Governmental Decisionmaking", 44 *Cinn. L. Rev.* 669, 674-75 (1975) (public-sector bargaining "provide[s] a special process available only to public employees", and "significantly increases the political effectiveness of public employees in determining their

peal." And the members of this Court have not been unmindful of it, either."[78]

The District Court, however, held that the unequal political influence MCCFA enjoys through its unique legal privilege to negotiate college employment-policies has "no constitutional significance".[79] Exactly the opposite is true: Equally foreign to the Constitution are the notions that government may enhance the

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terms and conditions of employment • • • relative to other competing political interest groups"); C. Summers, *ante* note 43, 83 *Yale L.J.* at 1193 (public employees "already have, as citizens, a voice in decisionmaking through customary political channels. The purpose of collective bargaining is to give them • • • a larger voice than the ordinary citizen"); R. Summers, "Public Sector Collective Bargaining Substantially Diminishes Democracy", *Gov't Union Rev.*, Vol. 1, No. 1 (Winter 1980), at 8, 21 ("[t]he redistribution of governmental authority pursuant to statutes establishing collective bargaining inherently diminishes democracy"; "bargaining • • • authenticates • • • a fundamentally nondemocratic mode of decisionmaking—a form of interest group syndicalism"); Lieberman, "Teacher Bargaining: An Autopsy", *The Kappan* (Dec. 1981), at 231, 232 ("[t]hat public sector bargaining is inconsistent with democratic government is no longer in doubt").

[77] *See ante*, notes 16-18 & accompanying text. The UTP made no attempt to challenge this expert-testimony.

[78] Abood, 431 U.S. at 229 (opinion of Stewart, J.) ("permitting • • • a union to bargain as [public employees'] exclusive representative gives the employees more influence in the decisionmaking process than is possessed by employees • • • in the private sector"), 261 n.15 (Powell, J., concurring in the judgment) (because of delegation of power to exclusive representatives, "voters • • • could complain with force and reason that their voting power and influence on the decisionmaking process ha[ve] been unconstitutionally diluted").

[79] A. at 9-10 n.8.

speech of one group in order to attenuate the relative voices of others, or distort its decisionmaking processes in order to benefit one group at everyone else's expense.[80] Indeed, even "[t]o permit one side of a debatable public question to have a monopoly in expressing its views to the government is the antithesis of constitutional guarantees".[81] Yet PELRA grants MCCFA a monopoly, not simply to express its views, but also to compel the Board to negotiate over those views, and to enter into agreements that have "all the attributes of legislation for the subjects with which [they] dea[l]".[82]

The essence of compulsory bargaining under PELRA is MCCFA's monopolistic influence over governmental decisionmaking in the colleges. This Court, however, has ruled repeatedly in other contexts that such political discrimination is unconstitutional, even if it promotes or defeats "good" or "bad" political views; balances political power among competing interest-groups; encourages "political stability"; solves "practical [political] problems"; aids or hinders particular economic, social, or other nonpolitical interests; recognizes the "special pecuniary or other interest" of some group in a governmental decision; takes employment-status into account; or even satisfies the demands

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[80] *See, e.g., mutatis mutandis,* First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 790-92 (1978); Washington v. Seattle School Dist. No. 1, —— U.S. ——, ——, 102 S. Ct. 3187, 3193-95 (1982).

[81] City of Madison, Joint School Dist. No. 8 v. WERC, 429 U.S. 167, 175-76 (1976) (footnote omitted).

[82] Abood, 431 U.S. at 252-53 (Powell, J., concurring in the judgment).

of majorities.[83] No rational—let alone legal, politically sound, or moral—basis exists for relaxing this precept of democratic government on behalf of a private, self-interested organization such as MCCFA.[84]

For the District Court's decision to stand, then, this Court must join with it in prostituting the political process in a way unknown in American history and violently at odds with the first principles of republicanism.[85]

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[83] Cipriano v. City of Houma, 395 U.S. 701, 704-06 (1969); Carrington v. Rash, 380 U.S. 89, 93-94 (1965); Davis v. Mann, 377 U.S. 678, 691-92 (1964); Gray v. Saunders, 372 U.S. 368, 379-80 (1963); Williams v. Rhodes, 393 U.S. 23, 31-32 (1968); Kirkpatrick v. Priesler, 394 U.S. 526, 533 (1969); Lucas v. Forty-Fourth General Assembly, 377 U.S. 713, 736-37, 738 & n.31 (1964); City of Phoenix v. Kolodziejski, 399 U.S. 204, 208-10 (1970); Evans v. Cornman, 398 U.S. 419, 422-26 (1970); Kramer v. Union Free School Dist., 395 U.S. 621, 630-33 (1969); Harper v. Board of Elections, 383 U.S. 663, 666 (1966).

[84] *See, e.g.*, Mayflower Farms, Inc. v. Ten Eyck, 297 U.S. 266, 273-74 (1936) (naked attempt to give "economic advantage" to one private group is unconstitutional discrimination). Certainly, where political discrimination is involved, the District Court's "retained-authority" apology is meritless. *See* Washington v. Seattle School Dist. No. 1, —— U.S. ——, ——, 102 S. Ct. 3187, 3198-3200 (1982); Crawford v. Board of Educ. of City of Los Angeles, —— U.S. ——, ——, 102 S. Ct. 3211, 3226 (1982) (Marshall, J., dissenting).

[85] *See The Federalist* No. 10, *applied to this issue in* E. Vieira, Jr., *"To Break and Control the Violence of Faction": The Challenge to Representative Government from Compulsory Public-Sector Collective Bargaining* (1980).

II. The District Court's "finding" that the UTP is not an integrated political-action organization travesties the facts in order to protect the UTP from application of the *Branti* doctrine.

Abood held that, even though public-sector bargaining is "political", a State may require non-members of an exclusive representative to finance such bargaining as a condition of employment. *Branti* v. *Finkel*,[86] on the other hand, held that a State may not require its non-policymaking employees to accept a political party as their "sponsor", or to finance any of its activities. Logically reconciled, *Abood* and *Branti* imply that a political party (or equivalently political organization) may not constitutionally serve as an exclusive representative in the public sector.[87]

Appellants contend that MCCFA, MEA, IMPACE, and NEA-PAC are component-parts of an integrated organization, the UTP; that the UTP's substantial and essential involvement in political activism (other than collective bargaining) renders it indistinguishable, for purposes of constitutional law, from a self-styled political party;[88] and, therefore, that the UTP's local unit, MCCFA, is constitutionally unfit to serve as an exclusive representative under PELRA. The

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[86] 445 U.S. 507 (1980), *following* Elrod v. Burns, 427 U.S. 346 (1976).

[87] *Compare* Abood, 431 U.S. at 255-57 (Powell, J., concurring in the judgment), 243-44 (Rehnquist, J., concurring), *with* Vieira, *ante* note 33, 27 *DePaul L. Rev.* at 320-21.

[88] The UTP has repeatedly characterized itself as a "special-interest group", a "movement", a "faction", or even "the education party". PRS Nos. 1133-34, 1136-38, 1140-43; T. at 456-59, 2107-08, 2565-66, 2635-36, 2639-41, 2991-92.

District Court apparently accepted Appellants' legal analysis, but held that their "theory is without merit as a factual matter" because: (1) the various units are not integrated in the UTP; and (2) "even if MCCFA, MEA and NEA were * * * 'integrated,' * * * each of these organizations is predominantly engaged in activities closely and directly related to collective bargaining".[89]

The merest highlights from the record, however, belie the District Court's ultimate "finding".[90] And careful review demolishes it utterly: *First,* the "finding" rests on erroneous legal standards.[91] *Second,* it lacks support in clear and convincing evidence, although evidence of that quality is requisite in First-Amendment cases such as this.[92] *Third,* it gives no weight to the uncontradicted expert-testimony in organizational and political science, although the issues of the UTP's integration and predominantly political character are beyond the ken of laymen.[93] *Fourth and last,* line-by-line analysis of all the District Court's subsidiary "findings" on the subject exposes them as false, misrepresentative of the record, irrelevant, or favorable to Appellants (not to the UTP, as that Court pretended).[94] Indeed, the District Court's ultimate "finding" so transparently burlesques the reali-

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[89] A. at 12.

[90] *Ante,* pp. 8-12.

[91] *See* MAF at 88-107, *in* A. at 255-74.

[92] *See id.* at 108-67, *in* A. at 274-335.

[93] *See id.* at 36-39, 44-77, 81-88, *in* A. at 204-07, 213-44, 248-55.

[94] *See id.* at 167-221, *in* A. at 335-89.

ties of this case as to suggest it was concocted solely to aid the UTP in escaping the effect of *Branti*.[95]

Even in a case not involving fundamental constitutional liberties, the District Court's "finding" would be reversible as clearly erroneous. Here, where this Court has the responsibility to examine the whole record independently,[96] the need for and propriety of reversal is even more obvious and imperative.

CONCLUSION

The District Court has ruled that, under the rubric "collective bargaining", Minnesota may delegate legislative power to a self-interested private group, thereby discriminatorily enhancing that group's political influence at the expense of all other citizens in the State. Even worse, the District Court has approved this delegation to a predominantly political organization. Thus, that Court has injected into the corpus of constitutional law the toxic political tenets of the corporative-state—or *fascistic*—system.[97] That such a result raises substantial questions demanding plenary consideration by this Court is self-evident.

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[95] *See id.* at 20-23, *in* A. at 179-90. These aberrant actions parallel the District Court's repeated countenancing of the UTP's "cover-ups" during discovery and at trial. *See id.* at 24-27, *in* A. at 191-94.

[96] *E.g.*, NAACP v. Claiborne Hardware Co., —— U.S. ——, —— & n.50, 102 S.Ct. 3409, 3427 & n.50 (1982); *See* MAF at 27-34, *in* A. at 194-202.

[97] *See* MAF at 237-46, *in* A. at 405-14. *See generally, e.g.*, G. Field, *The Syndical and Corporative Institutions of Italian Fascism* (1938), at 63, 69, 100, 138, 144; F. Pitigliani, *The Italian Corporative State* (1933), at xi-xiii, 11-13, 16-26, 32-33, 40-47, 91-98.

Therefore, this Court should note probable jurisdiction, and set this case down for full briefing and oral argument.

Respectfully submitted,

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1 December 1982

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 28 of the Rules of this Court, I have served three (3) copies of the attached JURISDICTIONAL STATEMENT on each of the following persons, by depositing said copies with the United States Postal Service, first-class postage prepaid, addressed as follows:

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